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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Rick Rowe

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01/23/2009

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EXAMINER

MEINECKE DIAZ, SUSANNA M

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/966,706	<b>Applicant(s)</b> ROWE ET AL.	
	<b>Examiner</b> Susanna M. Diaz	<b>Art Unit</b> 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2008 and 13 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28-36 is/are pending in the application.
- 4a) Of the above claim(s) 28-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/7/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This non-final Office action is responsive to Applicant's amendment filed January 13, 2009.

Applicant has amended claims 28 and 31.

Applicant has added new claim 36.

2. Claims 28-35 are directed to an invention that is independent or distinct from the invention originally claimed for the reasons presented in the Restriction analysis below. It is noted that claim 36 currently recites details of both Species I and Species II; however, these species are not explicitly disclosed as being integrated in the same embodiment. Therefore, a rejection under 35 U.S.C. § 112, 1<sup>st</sup> paragraph has been raised.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 28-35 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Applicant traverses the restriction requirement, asserting that "Claims 1-27 [now part of the subject matter of claim 36] and claims 28-35 are not distinct species, but rather relate to different aspects of the same species. In other words, both claim sets relate to limiting gaming wagers that a patron may make. Both claim sets contain independent claims relating to the same embodiments." (Page 5 of Applicant's

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response) The Applicant's own arguments support the assertion of the existence of two species. Both sets of claims are related to "a system for monitoring player financial transactions in a gaming environment" (as asserted by Applicant on page 5 of Applicant's response) because this is the genus subject matter common to both species. However, claims 28-35 recite the details of preventing a player from continuing to play when a winnings limit has been exceeded (i.e., Species II). Original claims 1-27 and new claim 36 recite details of preventing a player from continuing to play when a loss limit has been exceeded (i.e., Species I). Claim 36 also recites the details of preventing a player from continuing to play when a winnings limit has been exceeded (i.e., Species II). The original disclosure describes these species as part of separate embodiments. There is no disclosure of how these two species would be integrated into one coherent embodiment (which has provoked a rejection of claim 36 under 35 U.S.C. § 112, 1st paragraph below).

Applicant has not presented evidence showing that these two species were envisioned as usable in the same embodiment at the time of filing; therefore, Applicant's traversal is not persuasive and the restriction requirement is hereby made FINAL.

### ***Election/Restrictions***

3. This application contains claims directed to the following patentably distinct species:

**Species I:** Drawn to preventing a player from playing a plurality of gaming devices if a predetermined amount of player's loss has been exceeded, classified in class 705, subclass 39. (Claim 36)

**Species II:** Drawn to preventing a player from playing at a machine where a wager was made if the player's amount won exceeds a predetermined limit, classified in class 705, subclass 35. (Claims 28-36)

4. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic. It is noted that claim 36 currently recites details of both Species I and Species II; however, these species are not explicitly disclosed as being integrated in the same embodiment. Therefore, a rejection under 35 U.S.C. § 112, 1<sup>st</sup> paragraph has been raised.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Species I has been elected by original presentation. Claim 36 will be examined as part of Species I.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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7. Claim 36 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Non-elected claims 28-35 recite the details of preventing a player from continuing to play when a winnings limit has been exceeded (i.e., Species II). Original claims 1-27 (now cancelled) and new claim 36 recite details of preventing a player from continuing to play when a loss limit has been exceeded (i.e., Species I). Claim 36 also recites the details of preventing a player from continuing to play when a winnings limit has been exceeded (i.e., Species II). The original disclosure describes these species as part of separate embodiments. There is no support in the original disclosure as to how these two species would be integrated into one coherent embodiment; therefore, the combination of these two species into one method (as seen in claim 36) is deemed to present an issue of new matter.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

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to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crevelt et al. (U.S. Patent No. 5,902,983) in view of Johnson (US 2001/0031663 A1) and further in view of Walker et al. (U.S. Patent No. 6,012,983).

Crevelt discloses a method of monitoring player financial activities in a gaming environment in which a player may play one or more games comprising the steps of:  
[Claim 36] generating a financial account corresponding to a player, said account represented by at least one data file, said at least one data file adapted to contain financial information (col. 5, lines 36-40 -- Each gaming machine may provide player tracking information and accounting information to the local area network; col. 5, lines 45-52; col. 6, lines 3-9; col. 8, lines 18-61; col. 9, lines 58-65; col. 10, line 55 through col. 11, line 9);

storing financial information regarding monetary amounts belonging to a player which may be used to play said one or more games (col. 5, lines 36-40 -- Each gaming machine may provide player tracking information and accounting information to the local area network; col. 5, lines 45-52; col. 6, lines 3-9; col. 8, lines 18-61; col. 9, lines 58-65; col. 10, line 55 through col. 11, line 9);

automatically creating a data file for the player at a financial transaction host if there is no data file associated with the player, wherein the data file is matched with the player using a unique identifier associated with a remote financial institution (col. 8, lines 42-67; col. 9, lines 1-29 -- The player's financial account information is electronically



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accessed. When the player set up his/her account, a processing device must have automatically, i.e., through use of a machine/computer/processor, created a data file for the player since the player previously did not have his/her own data file for that account; Figs. 1, 2; col. 5, lines 17-45; col. 8, lines 42-61 -- Each gaming machine may provide player tracking information and accounting information to an EFT system through a local area network. The EFT system, i.e., the financial transaction host, maintains player-related data; columns 9-10 -- The casino may communicate with an external financial institution to conduct transactions with an account associated with the player. Such an external account identifier would be a unique identifier associated with an outside institution. Funds may be transferred between the player's internal casino account and outside financial institution account);

storing financial information regarding monetary amounts expended by a player in playing said one or more games (col. 5, lines 36-40 -- Each gaming machine may provide player tracking information and accounting information to the local area network; col. 5, lines 45-52; col. 6, lines 3-9; col. 8, lines 18-61; col. 9, lines 58-65; col. 10, line 55 through col. 11, line 9); and

determining player loss from said financial information (col. 3, lines 8-18);

determining an amount won from said financial information (col. 3, lines 8-18).

Regarding claim 36, Crevelt does not expressly teach the step of preventing said player from utilizing monetary amounts associated with said account to play said one or more games for at least a period of time if said determined player loss meets certain

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criteria. However, Johnson discloses the step of preventing said player from utilizing monetary amounts associated with said account to play said one or more games for at least a period of time if said determined player loss meets certain criteria (¶¶ 13, 17, 19, 23). This feature of Johnson helps to curb gambling problems as well as assist casinos (and other gambling/playing locations) in conforming to jurisdictional restrictions regarding gambling loss limits (¶¶ 10, 13, 17). Crevelt too is concerned with reasonably limiting the money spent by a player on gambling/gaming machines (col. 2, lines 18-28; 31-49; col. 4, lines 54-62), as evidenced by Crevelt's statements that the prior art "likely will be unpalatable to at least some legislatures which regulate gaming" and that Crevelt addresses "a need for an EFT system that allows cashless transfers of funds to gaming machines and yet protects against rash decisions by some players to divert large amounts of their savings to gaming" (col. 2, lines 23-28). Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Crevelt to perform the step of preventing said player from utilizing monetary amounts associated with said account to play said one or more games for at least a period of time if said determined player loss meets certain criteria in order to help curb gambling problems as well as assist casinos (and other gambling/playing locations) in conforming to jurisdictional restrictions regarding gambling loss limits (as suggested in both ¶¶ 10, 13, and 17 of Johnson and col. 2, lines 23-28 of Crevelt).

Crevelt does not explicitly disclose the step of storing a threshold win amount limit, above which subsequent play should be limited or the step of comparing the

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amount won to the limit on the amount won. However, Walker allows players to set a limit on winnings such that automated play is stopped if the winnings threshold is exceeded (Fig. 8B, col. 8, lines 15-33, 50-61). According to Walker, "there is provided a method and apparatus for automated play which permits a casino to recognize substantially increased play time, and hence revenue, from a gaming device. At the same time, the invention satisfies a player's emotional desire to maximize his playing time on selected gaming devices, while accommodating the physical need to at times be away from the machines." (Col. 2, lines 29-37) Both Crevelt and Walker are directed toward gambling environments; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Crevelt to perform the step of storing a threshold win amount limit, above which subsequent play should be limited and the step of comparing the amount won to the limit on the amount won, as taught by Walker, in order to create an automated play environment "which permits a casino to recognize substantially increased play time, and hence revenue, from a gaming device [and at] the same time satisfy a player's emotional desire to maximize his playing time on selected gaming devices, while accommodating the physical need to at times be away from the machines" (as suggested in col. 2, lines 29-37 of Walker).

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/  
Primary Examiner, Art Unit 3692